

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
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VIA ECF

July 25, 2024

The Honorable George B. Daniels, U.S.D.J.
United States District Court for the S.D.N.Y.
Daniel P. Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

The Honorable Sarah Netburn, U.S.M.J.
United States District Court for the S.D.N.Y.
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Daniels and Judge Netburn:

The Plaintiffs Executive Committees and *Ashton* Plaintiffs (collectively "Plaintiffs") write to supplement the record in support of Plaintiffs' pending motion for reconsideration and Rule 72 objections, ECF No. 9571, as to Judge Netburn's Order of January 26, 2024, ECF No. 9562, excluding the Declaration of Plaintiffs' expert Bassem Youssef, Pls. Ex. 694, Youssef Decl.

Youssef's Declaration in its relevant part addresses video footage recorded by Saudi Arabia's agent Omar Al-Bayoumi in Washington, D.C. in June-July 1999, Pls. Ex. 10F, MPS2023-003, which Youssef found to comprise "a casing report of the U.S. Capitol Building" as a target for a future terrorist attack, consistent with Al Qaeda's *modus operandi*. *Id.* at 2, 3; ECF No. 9571 at 5. The video was seized from Bayoumi's possession by the UK's Metropolitan Police Service (MPS), when Bayoumi was arrested shortly after the 9/11 attacks, and produced by the MPS on December 8, 2023. Youssef's Declaration containing his analysis of Bayoumi's "Capitol casing report" was submitted in evidence just 12 days later, on December 20, 2023, with Plaintiffs' opposition to Saudi Arabia's renewed motion to dismiss. As part of their public filing of judicial documents, Plaintiffs filed the video on the public docket on June 18, 2024, ECF No. 9936-2.

Media and public interest in this evidence has been significant,¹ leading subject matter experts to offer independent assessment. On June 23, 2024, in a segment titled "Homeland Threats" on the CBS News program "Face The Nation," an analysis of the video was provided by Michael J. Morell, the former Acting Director and Deputy Director of the Central Intelligence Agency (CIA). Mr. Morell's 33-year career at CIA, from 1980 to 2013, included serving as Director of Intelligence and, in 2001, as the Agency's analyst responsible for briefing the President.

¹ See, e.g., C. Vega, R. Bonin, M. Brussani, *Investigators for 9/11 families examine video taken by man with ties to Saudi intelligence referencing a "plan,"* CBS News, June 20, 2024, available at: <https://www.cbsnews.com/news/bayoumi-video-examined-as-september-11-evidence-60-minutes> (accessed July 24, 2024). See also ECF Nos. 10067, 10071, 10084, 10102, 10103, and 10108 (letters from The New York Times, Pro Publica, CBS News, NewsNation, CNN, Broward Bulldog *et al.*).

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Former CIA Deputy Director Morell stated: “No doubt in my mind that it is a casing video, that it is a casing video for some sort of terrorist attack.” Ex. 1 at 2.²

Basing his analysis on “what [Bayoumi] was videotaping, [and] his narration over the top of it... which is part what tells you it was a casing video,” Mr. Morell affirmed that the video showed Bayoumi was “tasked” to prepare this video as a “report” in which he was “talking to somebody... [and] talking about a plan.” *Id.* at 2.

Mr. Morell further stated that Bayoumi’s speech on the “chilling” video exhibited “extremism” that made it “pretty clear” that Bayoumi was aligned with Al Qaeda. *Id.* at 2. Mr. Morell gave the example of Bayoumi’s utterances that “these are the demons,” when Bayoumi was characterizing “what he’s looking at” while “looking at the Capitol.” Mr. Morell concluded – in stark contradiction to Saudi Arabia’s unsupported assertions regarding this evidence – that it is “not like a tourist video.” *Id.* at 2.

Former CIA Deputy Director Morell attached sufficient importance to this new evidence to state that “[as] the President’s briefer at the time... [i]f somebody had shown me this video, I would have shown it to the President.” *Id.* at 3.

Mr. Morell’s analysis and statements underscore the merits of Plaintiffs’ motion for reconsideration and Rule 72 objections, ECF No. 9571, and reaffirm the importance of Plaintiffs’ expert evidence, ECF No. 9562 at 13, in showing that Bayoumi, along with Saudi Embassy diplomats and Ministry of Islamic Affairs officials Khalid Al-Sowailem, Mutaeb Al-Sudairy, and Adel Al-Sadhan, were acting together in support of Al Qaeda. Pls. Ex. 694, Youssef Decl. ¶¶28-36. Moreover, Mr. Morell’s analysis show that there is no merit to Saudi Arabia’s argument, ECF No. 9595, that Plaintiffs’ expert evidence “should not be taken seriously.” To the contrary, former CIA Deputy Director Morell’s assessment is consistent with that of Plaintiffs’ expert Youssef, that the video reflects a pre-operational “casing” of the Capitol for an Al Qaeda attack.

Plaintiffs submitted the Youssef Declaration within 12 days of receiving the key video evidence from the MPS and acted with great urgency and diligence in placing it before this Court. Given its manifest importance, Plaintiffs should not be deprived of the opportunity to offer expert testimony about this video evidence, and the Youssef Declaration should be allowed into the record.

² The relevant part of the transcript of former CIA Deputy Director Michael Morell on CBS News “Face The Nation,” June 23, 2024, is attached as Exhibit 1.

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Respectfully submitted,

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For Ashton Plaintiffs

cc: All Counsel of Record via ECF